

APPEAL NO. 041051
FILED JUNE 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on March 11, 2004. The hearing officer decided that the appellant's (claimant herein) compensable injury of _____, does not extend to or include the left shoulder or the cervical spine. The claimant files a request for review in which he argues that this determination was contrary to the evidence and that the Decision and Order is insufficient as a matter of law because it failed to provide the appellant required due process notice of the basis of the Decision and Order. The respondent (carrier herein) filed a response, urging affirmance.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence on the issue of extent of injury, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The appellant also challenged the legal sufficiency of the hearing officer's decision for not providing due process notice of the basis for the decision. The claimant cites Texas Workers' Compensation Commission Appeal No. 000595, decided May 3, 2000, a case in which the hearing officer did not address a specific issue, good cause based upon trivialization of an injury. In that case, we remanded so that the hearing officer could expressly address and resolve the question of whether the claimant trivialized the injury, and whether such trivialization did or did not constitute good cause. The claimant also cites Texas Workers' Compensation Commission Appeal No. 972140, decided December 3, 1997, where we stated that there must be "some basis or rationale based on the evidence presented for the decision rather than an ultimate conclusion." In the instant case, the hearing officer was evaluating the entire record of evidence to determine whether the compensable injury sustained on _____, extended to and include the left shoulder and/or the cervical spine. The hearing officer did not fail to address a specific issue. Moreover, a review of the discussion in the decision and order shows that the hearing officer reviewed the initial compensable injury, was aware of the claimant's left shoulder and cervical spine condition and of the claimant's contention that these conditions were part of the initial compensable injury, and that he found the testimony of a particular doctor persuasive when he found no causal connection between the compensable injury and the claimant's left shoulder and cervical conditions. As the trier of fact, the hearing officer may believe the testimony of a witness as stated above.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251-2237.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Chris Cowan
Appeals Judge